

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ANGELA CARABELLO et al.	:	CIVIL ACTION
	:	
v.	:	
	:	
WILLIAMS FUND PRIVATE EQUITY	:	
GROUP, INC. and KENNETH MITAN	:	NO. 06-1052

MEMORANDUM

Baylson, J.

July 25, 2006

Presently before the Court are Defendant Kenneth Mitán's ("Defendant") Motion to Stay Suit Pending Arbitration (Doc. No. 3) and Motion to Declare Post-Removal Order as Void Ab Initio (Doc. No. 4). Plaintiffs have both opposed Defendant's Motions and filed a Counter-Motion to Remand the Case to State Court (Doc. No. 8), arguing that the matter was never properly removed from the Court of Common Pleas for Philadelphia County.

The procedures for removal of a case from state to federal court are set forth at 28 U.S.C.

§ 1446 and require, inter alia, that:

Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect removal and the State court shall proceed no further unless and until the case is remanded.

28 U.S.C. § 1446(d).

Defendant argues that he served Plaintiffs with a notice of removal on March 7, 2006,¹ and also on that date sent, by a private overnight delivery service, a copy of said notice to the

¹ The other Defendant, Williams Fund Private Equity Group, Inc., has certified its consent to removal. See Def's Reply, Ex. I.

Court of Common Pleas for Philadelphia County. The notice was never made part of the state court docket, however, and Philadelphia Common Pleas Court Judge Howland W. Abramson moved forward with a previously scheduled hearing on March 8, 2006, at which Defendants did not appear. Defendant contends that because the notice of removal was filed with this Court on March 7, 2006, the hearing held on March 8, 2006 before Judge Abramson, and the order granting Plaintiffs' Motion for a Preliminary Injunction, should be considered void because, under the removal statute, "the State court shall proceed no further unless and until the case is remanded." Id.

While the Court understands Defendant's position, we are unable to consider his arguments. Since the case was never properly removed from state court, this Court is without jurisdiction. Though Defendant did file a notice of removal in the clerk's office of the Eastern District of Pennsylvania on March 7, 2006, and contends he sent a copy to the Court of Common Pleas by Federal Express, there is no docket entry in the Court of Common Pleas record. The absence of such a record requires a conclusion that Defendant never properly filed "a copy of the notice with the clerk of [the] State court," as required under 28 U.S.C. § 1446(d). Although Defendant contends he mailed a copy of the papers to the state court, he failed to submit the copy "*after* the filing of [the] notice of removal of [the] civil action." Id. (emphasis added).² Because

² The Court of Common Pleas for Philadelphia County requires a certified copy of the removal papers indicating that they were filed in federal court. Thus, the very records filed by Defendant in support of his reply brief demonstrate that he could not have complied with the removal procedures in question. See Def's Reply, Ex. J. The Federal Express tracking records indicate that a mailing was sent on March 6, 2006 from Defendant to the "Clerk of Court, Court of Common Pleas - Civil Division" and received the following day. Defendant, however, did not file his notice of removal in federal court until March 7, 2006 and therefore could not have enclosed a certified copy of that document in the mailing sent to the state court clerk. Even if the state court requirement of a certified copy is outside the federal statute, § 1446(d) clearly states that the notice to be filed in state court is to be filed "*after*" the notice of

the removal procedures were not followed, and because the notice of removal was not docketed in the state court record, the Court of Common Pleas for Philadelphia County never lost, and continues to have, jurisdiction over the case.

For the reasons stated above, this Court never obtained jurisdiction over the case and consequently is unable to consider the pending motions. Defendant's Motions to Stay Suit Pending Arbitration and Declare Post-Removal Order as Void Ab Initio and Plaintiff's Counter-Motion to Remand will therefore be denied as moot.

An appropriate Order follows.

removal filed in federal court. Defendant has not shown compliance with the removal statute.

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ORDER

AND NOW this 25th day of July, 2006, the Court concludes that it has no jurisdiction over this matter, and it is hereby ORDERED that the Notice of Removal (Doc. No. 1) is stricken, and Defendant's Motion to Stay Suit Pending Arbitration (Doc. No. 3) and Motion to Declare Post-Removal Order as Void Ab Initio (Doc. No. 4) and Plaintiff's Counter-Motion to Remand the Case to State Court (Doc. No. 8) are DENIED AS MOOT. The Clerk is directed to close the case.

BY THE COURT:

s/ Michael M. Baylson
MICHAEL M. BAYLSON, U.S.D.J